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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 95)
of the Commission's Rules)
to Allow Interactive Video and)
Service Licensees to Provide)
Mobile Service to Subscribers)

WT Docket No. 95-47
RM-8476

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To: The Commission

Reply Comments of The National Action Group for IVDS

The National Action Group for IVDS (National Action Group)¹ hereby replies to the opening comments filed in response to the Notice of Proposed Rule Making adopted by the Commission in the above-captioned docket.² As discussed below, the opening comments reflect nearly unanimous support for the adoption of rule changes that would allow IVDS licensees to serve non-fixed locations. In addition, the overwhelming majority of the commenters urge the Commission to adopt further rule revisions that will afford IVDS licensees greater technical and operational flexibility so

¹ The National Action Group is a coalition of IVDS licensees that represent over twenty markets nationwide. The coalition members include IVDS license holders in a number of major markets, such as New York, Boston, Houston, Los Angeles, Washington, D.C., Chicago, Detroit, Philadelphia, Seattle, and Cleveland, as well as several smaller markets. Based on the number and size of these markets, it is estimated that the members of the National Action Group are capable of providing IVDS service to over 40 percent of the U.S. population.

² Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers, FCC 95-158 (released May 5, 1995) (Notice of Proposed Rule Making).

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that they may participate in the development of innovative, spectrum efficient service offerings. The National Action Group reiterates its support for rule changes to this effect and, in light of the record support for such action, asks the Commission to adopt the requested rule changes expeditiously.

I. The Opening Comments Reflect Almost Unanimous Support for the Commission's Proposal to Allow IVDS Licensees to Serve Non-Fixed Locations and Reflect Broad Support For Additional Rule Changes That Would Afford IVDS Licensees Greater Technical and Operational Flexibility.

Sixteen formal comments were filed in response to the Commission's Notice of Proposed Rule Making in this proceeding. As indicated above, the commenters express almost unanimous support for the proposal to allow IVDS licensees to serve non-fixed locations.³ Only one commenter, Brown and Schwaninger, appears to oppose the

³ See, e.g., Comments of Active Communications Partners, WT Docket No. 95-47, at 1-2 (filed June 26, 1995); Comments of Concepts to Operations, Inc., WT Docket No. 95-47, at 1 (filed June 26, 1995); Comments of the Committee for Effective IVDS, WT Docket No. 95-47, at 1-3 (filed June 26, 1995); Comments of Wireless Plus, WT Docket No. 95-47, at 1 (filed June 26, 1995); Comments of Interactive Management Services, LLC, WT Docket No. 95-47, at 1 (filed June 26, 1995); Comments of Triad TV Data, WT Docket No. 95-47, at 1-3 (filed June 26, 1995); Comments of Dispatch Interactive Television, WT Docket No. 95-47, at 4 (filed June 26, 1995); Comments of ITV, Inc., and IVDS Affiliates, LLC, WT Docket No. 95-47, at 2 (filed June 26, 1995); Comments of Henry Mayfield, WT Docket No. 95-47, at 2 (filed June 26, 1995); Comments of SEA, Inc., WT Docket No. 95-47, at 2-4 (filed June 26, 1995); Comments of Irwin Aguayo, Jr., WT Docket No. 95-47, at 2 (filed June 26, 1995); Comments of IVDS Licensees, WT Docket No. 95-47, at 4 (filed June 26, 1995); Comments of Richard L. Vega Group, WT Docket No. 95-47, at 1-2 (filed June 26, 1995); Comments of Radio Telecom and Technology, Inc., WT Docket No. 95-47, at 2-3 (filed June 26, 1995); Comments of the National Action Group for IVDS, WT Docket No. 95-47, at 6-7 (filed June 26, 1995).

proposal if it means that IVDS systems would be used for purposes other than the delivery of interactive video and data services.⁴ In addition, most commenters addressing the issue urge the Commission not to restrict the provision of mobile IVDS service to fixed subscribers or to require mobile IVDS service to be provided on an ancillary-only basis.⁵ Similarly, the vast majority of the commenters oppose the imposition of additional power restrictions on fixed or mobile RTUs,⁶ and urge the Commission to liberalize further the IVDS technical and operational rules by relaxing

⁴ Comments of Brown and Schwaninger, WT Docket No. 95-47, at 2 (filed June 26, 1995). *See also* Comments of Radio Telecom and Technology, Inc., ("RTT") at 2-3. RTT urges the Commission to avoid rule changes that will divert the primary purpose of IVDS from two-way interactive video service into a one-way data transmission service with no relation to video.

⁵ *See, e.g.,* Comments of the Committee for Effective IVDS at 3-4; Comments of Triad TV Data at 5; Comments of Henry Mayfield at 2-3; Comments of IVDS Licensees at 4; Comments of the National Action Group for IVDS at 6.

⁶ *See, e.g.,* Comments of Active Communications Partners at 1 (fixed and mobile); Comments of the Committee for Effective IVDS at 6-7 (fixed and mobile); Comments of Wireless Plus at 2 (fixed); Comments of Triad TV Data at 5 (fixed, in particular); Comments of Dispatch Interactive Television at 4-8 (fixed and mobile); Comments of Interactive Management Services, LLC, at 1 (mobile, in particular); Comments of Triad TV Data at 5 (fixed and mobile); Comments of Henry Mayfield at 2 (fixed); Comments of SEA, Inc., at 5 (supports 100 milliwatt ERP power limit for itinerant mobiles, 20 watt ERP for all other RTUs); Comments of Irwin Aguayo at 2-3 (fixed and mobile); Comments of IVDS Licensees at 5 (fixed and mobile); Comments of Richard L. Vega Group at 2 (fixed); Comments of Radio Telecom and Technology, Inc., at 6 (opposes 100 milliwatt ERP limit for mobile RTUs if based on peak as opposed to average power, premature to revisit fixed RTU power level); Comments of Concepts to Operations, Inc., at 5-6 (fixed and mobile).

or eliminating the five second per hour duty cycle and permitting other types of transmissions.⁷

In light of the above, it is clear that the majority of IVDS licensees agree that the Commission's rules must be made more flexible if IVDS is to succeed. In particular, the IVDS licensees responding to the Commission's Notice of Proposed Rule Making are in nearly unanimous agreement that greater technical and operational flexibility is necessary for the service to reach its full potential as a viable communications option.⁸ In addition, a number of commenters agree that greater

⁷ See, e.g., Comments of Active Communications Partners at 2 (supports elimination of the duty cycle limit and allowing RTU-to-RTU data transmission); Comments of the Committee for Effective IVDS at 4-5 (supports elimination of the duty cycle limit and permitting licensees to provide a broad array of services, provided that no interference results to adjacent channel licensees); Comments of Wireless Plus at 1-2 (supports maximum flexibility in system design and relaxation of the duty cycle limit); Comments of Interactive Management Services, LLC, at 2 (supports elimination of duty cycle limit); Comments of Triad TV Data at 4 (supports elimination of duty cycle limit with mobile use); Comments of ITV, Inc., and IVDS Affiliates, LLC, at 3-4 (supports allowing licensees to provide a broad range of mobile services and changes in the duty cycle that parallel any reduction in ERP); Comments of SEA, Inc., at 6-7 (supports relaxing the five second per hour duty cycle in Channel 13 markets and eliminating it in non-Channel 13 markets); Comments of Irwin Aguayo, Jr., at 4 (supports relaxing the duty cycle); Comments of IVDS Licensees at 5, 6-7 (support allowing IVDS licensees to provide a full panoply of services, elimination of the duty cycle limit, and allowing mobile RTU-to-RTU transmissions); Comments of Richard L. Vega Group at 4 (supports RTU-to-RTU transmissions); Comments of Concepts to Operations at 6 (five second per hour duty cycle limit appears unnecessary in the case of mobile RTUs); Comments of the National Action Group for IVDS at 7-12 (supports elimination of the duty cycle limit and permitting non-ancillary CTS-to-CTS transmissions).

⁸ See, e.g., Comments of the Committee for Effective IVDS at 2 ("Instead of artificially circumscribing IVDS service offerings, the Commission should . . .

(continued...)

flexibility can be achieved without causing harmful interference to adjacent channel licensees, including Channel 13 operations.⁹ Significantly, no Channel 13 licensees filed comments opposing the Commission's proposal to allow mobile IVDS operations, nor did any Channel 13 commenters respond to the Commission's request for comment as to whether its existing duty cycle limitation should continue to apply or as to whether more stringent power limitations should be imposed on RTUs.

In addition, in light of the strenuous indication in the opening comments that greater flexibility is needed for IVDS operations, the National Action Group submits that the record as a whole supports the adoption of its request that the Commission eliminate or relax the following rules, which have proved to be impediments to the development of innovative IVDS offerings. In particular, the National Action Group urges the Commission to: (1) eliminate or substantially relax the five second per hour duty cycle limit currently applicable to RTUs; (2) allow mobile RTUs to operate under

⁸(...continued)

permit licensees to provide whatever services they desire . . . so long as they do not cause harmful electrical interference to licensed operations on adjacent frequencies. Such an approach is the only way to ensure that this valuable spectrum is used for its highest, most productive purpose, including the rapid development and implementation of innovative services."); Comments of the IVDS Licensees at 1-2 (" . . . [T]he addition of mobility and the elimination of the five second per hour duty cycle will . . . dramatically enhance the viability of IVDS, incentivize investment in the IVDS industry and expand the range of services and uses of IVDS spectrum . . . consistent with the public interest.")

⁹ See, e.g., Comments of the Committee for Effective IVDS at 5-6; Comments of the IVDS Licensees at 7 & n.4; Comments of the National Action Group for IVDS at 8; Comments of Comments of Triad TV Data at 3-5; Comments of Dispatch Interactive Television at 8 (regarding power levels).

the same power limits as fixed RTUs (at a minimum, one watt); (3) increase the maximum permitted power limits, particularly as applied to IVDS cell transmitter stations (CTSs) located at or near the Grade B service contour of affected TV Channel 13 stations; and (4) allow CTS-to-CTS transmissions on a primary (*i.e.*, non-ancillary) basis. As discussed in detail in the opening comments filed by the National Action Group, rule changes to this effect will serve the public interest by helping IVDS emerge as a viable option in the communications marketplace without increasing interference to Channel 13 or other broadcast services. The IVDS licensee would remain obligated under 47 C.F.R. § 95.861(d) to remedy interference to television reception. In addition, adoption of the rule changes suggested by the National Action Group will satisfy the demands of the commenters by allowing IVDS licensees to engage in a full range of services, thereby permitting IVDS to reach its full potential and to prosper.

The need for higher power and increased duty cycles is dictated by the realities of signal propagation and traffic experienced in the real world. For example, antenna sites in New York City higher than 500 feet are common; indeed, antennas are required to clear the tops of adjacent buildings. However, 47 C.F.R. § 95.859(a)(1) limits the ERP of CTS antennas of this height to 0.29 watts. This power limit is too restrictive to allow adequate building penetration for the effective provision IVDS offerings. Raising the lowest CTS power limit to 5 watts, coupled with the obligation that the

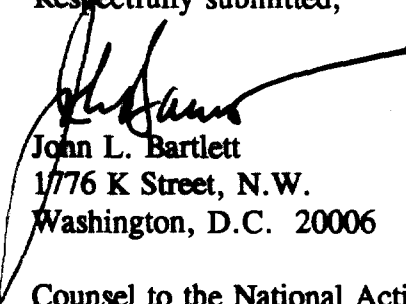
IVDS licensee remedy any interference, would clearly serve the public interest and address the needs of all interested parties.

Finally, contrary to RTT's concerns, the National Action Group submits that the adoption of rule changes that will afford IVDS licensees greater technical and operational flexibility will actually help preserve the Commission's original perception of IVDS as a low cost, convenient method of two-way interaction between television viewers and programmers. In particular, adoption of the rule changes suggested by the National Action Group will permit the development of offerings that appeal to a sufficient number of subscribers to reduce the cost of service on a per subscriber basis, making the overall cost of IVDS service affordable for individual consumers. In addition, the requested rule changes will generate demand that will allow development of an infrastructure capable of delivering IVDS service to the maximum number of subscribers. Only after licensees begin earning a return on their capital investments -- something that is not likely to happen given the state of existing video-only service options -- can they turn toward developing viable video applications. In the interim, permitting IVDS spectrum to be used for the provision of innovative alternative services will serve the public interest, in a manner consistent with the Commission's original vision of IVDS, by fostering effective spectrum use and helping to ensure the long-term success of IVDS.

II. Conclusion

In summary, the record supports the adoption of rule changes that will afford IVDS licensees greater technical and operational flexibility. In view of this fact, the National Action Group reiterates its request that the Commission remove a number of specific regulatory constraints that prevent IVDS from becoming a viable service offering in the communications marketplace. Prompt adoption of rule changes to this effect will serve the public interest by providing a mechanism for satisfying existing demands for communications services. In addition, the adoption of rule changes that liberalize the technical and operational restrictions applicable to IVDS licensees will help ensure the long-term success of IVDS by creating a means for existing licensees to provide service to the maximum number of customers, thereby reducing costs on a per subscriber basis and permitting the establishment of an extensive IVDS infrastructure.

Respectfully submitted,



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